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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

NUMBER 587

JOHN PAUL SHELTON,

Petitioner

VERSUS

T. RALPH GRIMES,
SHERIFF OF FULTON COUNTY,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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PETITION FOR WRIT OF CERTIORARI

John Paul Shelton hereby prays this Court to issue a writ of certiorari to review a judgment of the Georgia Supreme Court dated June 20, 1968, petition for rehearing denied July 2, 1968, affirming a judgment of the Fulton Superior Court dated February 27, 1968, discharging a writ of habeas corpus and remanding petitioner to custody of respondent sheriff for extradition to Michigan.

OPINIONS BELOW

The opinion of the Georgia Supreme Court appears at pages 117-119 in the record, and a copy is appended hereto (App. 24A). It is officially reported in 224 Ga. 451, 162 SE 2d 426. The order denying petition for rehearing appears at page 126 in the record and a copy is appended hereto (App. 31A). The judgment of the Fulton Superior Court appears at page 38 in the record and a copy is appended hereto (App. 19A).

JURISDICTION

The judgment of the Georgia Supreme Court was entered June 20, 1968 (R. 117-119) (App. 24A). A timely petition for rehearing was denied July 2, 1968 (R. 120-126) (App. 27A-31A). This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3), since there is drawn in question certain rights, privileges and immunities specially set up and claimed under the Constitution and laws of the United States.

QUESTION PRESENTED

Whether a habeas corpus petitioner in an interstate extradition proceeding should be released, where the extradition warrant fails to recite that the requisition from the demanding state is founded upon an *indictment,* or affidavit made before a *magistrate*; and where no documents supplying or explaining this omission are attached to or incorporated in the warrant, or attached to the sheriff's return, or offered in evidence at the habeas corpus hearing; and where the State makes no showing that the charge is supported by *oath or affirmation.*

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 4, Section 2, United States Constitution:

"A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on Demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

Fourth Amendment, United States Constitution:

" . . . and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation."

Fourteenth Amendment, United States Constitution:

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

18 U.S.C. 3182 (Act of Congress dated February 12, 1793):

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State, District or Territory to which such person has fled, and produced a copy of an *indictment* found or an affidavit made before a *magistrate* of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear."

STATEMENT OF THE CASE

This is an interstate extradition case. Michigan is the demanding state. Georgia is the asylum state. The federal question involves the sufficiency of recitals in the extradition warrant; what documents if any should be attached to or described in the warrant under the probable cause requirement of the *Fourth Amendment,* that all warrants must be supported by *oath or affirmation;* the effect of the requirement of *18 U.S.C. 3182* that a request for extradition must be accompanied by an *indictment* or affidavit made before a *magistrate;* and whether petitioner's rights under the Fourteenth Amendment to *due process* have been violated.

Petitioner instituted this action by filing a petition for writ of habeas corpus, to test the legality of his arrest and detention under an extradition warrant issued by the Governor of Georgia. The petition alleged, *inter alia:*

"4. That the said warrant is insufficient upon its face because it does not recite the facts necessary to its validity . . . in that: (a) It fails to recite that the requisition referred to therein was accompanied by an indictment found, or affidavit made, before a magistrate; which recitals are essential under provisions of 18 U.S.C. 3182 . . . (R. 7) (App. 2A).

"5. That the Governor of Georgia did not by reference incorporate in said extradition warrant, or attach thereto, any legally sufficient papers or documents from the demanding state necessary to the validity of its issuance, such as a legally sufficient requisition from the Governor of Michigan, an indictment found, or an affidavit made before a magistrate . . . (R. 8) (App. 2A).

"7. That there is not attached to, or by reference incorporated in, said extradition warrant, any proper requisition supported by affidavit, complaint or information sworn to before a magistrate by anyone having personal knowledge of the facts of the case, or by anyone who, deposing upon information, belief and hearsay, furnished in said affidavit any proper basis for crediting the hearsay therein, such as the sources of the information and belief, or that the informants of the affiants were credible or their information reliable, as required by the Fourth and Fourteenth Amendments of the United States Constitution, and by the decisions of the United States Supreme Court in *Giordenello v. United States,* 357 U.S. 480, and in *Aguilar v. Texas,* 378 U.S. 108." (R. 7-8) (App. 3A).

In support of these allegations, petitioner attached to his sworn petition the authorization issued by Governor Romney October 23, 1967, and the extradition warrant issued by Governor Maddox December 28, 1967. (R. 11-14) (App. 5A-6A).

Governor Romney's authorization, omitting formal parts, was as follows: "Know ye, that I am authorized and empowered, and by these presents do authorize and empower Ralph W. Smith and/or Arthur F. Krol to take and receive from the proper authorities of the State of Georgia Jay Paul Shelton, a fugitive from justice from the State of Michigan, and convey him to the said State of Michigan, there to be dealt with according to law. The state to be liable for no expense incurred in the pursuit and arrest of said fugitive." (R. 13-14) (App. 5A).

The extradition warrant issued by Governor Maddox

(omitting formal parts) was as follows: "Whereas, His Excellency, George Romney, Governor of the State of Michigan, and as the Executive authority thereof, has demanded of me Jay Paul Shelton, a Fugitive from Justice from the said State, and has produced to me a Requisition, accompanied by supporting documents, charging the said Fugitive with having committed in the said State the crime of Conspiracy to utter and publish, conspiracy to commit false pretenses and uttering and publishing, which documents are duly certified as authentic by His Excellency, the Governor of said State, and has also appointed Ralph W. Smith and/or Arthur F. Krol and/or Agent on the part of the said State to receive the said Fugitive from Justice from Civil Authorities of this State to the end that he may be carried to said State, there to be dealt with according to law. And, whereas, it is suspected that the said Fugitive from Justice is now within the jurisdictional limits of this State: Now, in accordance with the provisions of an Act of Congress, passed 12th February 1793, respecting Fugitives from Justice, and in accordance with the provisions of the Uniform Criminal Extradition Act approved February 21, 1951 (Ga. L. 1951, p. 726), and in order that the said Fugitive from Justice may be brought to trial for the offense for which he stands charged: You are hereby commanded to arrest and deliver the said Fugitive from Justice to the said Agent for the purpose of being carried to the said State within whose jurisdiction said offense is alleged to have been committed. (signed) Lester Maddox." (R. 11-12) (App. 6A).

At the habeas corpus hearing, respondent's counsel produced a file of papers which he referred to as "the entire Extradition proceedings." (R. 52) (App. 12A).

However, he did not claim to have in his file any *indictment,* or any complaint made before a *magistrate* that was supported by *oath or affirmation;* neither did he make any showing that any paper in his file had ever been produced to, relied upon, or even seen by the Governor of Georgia, with exception of the warrant which Governor Maddox himself signed, and the "authorization" signed by Governor Romney. These two documents were received in evidence without objection. (R. 11-14, 62, 90, 91) (App. 5A-6A, 16A, 18A).

Petitioner's counsel objected to admitting into evidence any other document "unless that document is specifically referred to in the Governor's warrant and unless it is shown that the Governor himself considered that paper in reaching his decision in issuing the Governor's warrant." (R. 53) (App. 12A-13A) Whereupon, respondent's counsel, without waiting for a ruling by the Court, elected to travel on the Governor's warrant alone, stating: "I'm going to withdraw everything we have offered except the Governor's warrant from the State of Georgia." (R. 62) (App. 16A) "That would be all that we have got, Your Honor, I stand on the Governor's warrant." (R. 90) (App. 18A)

Petitioner's counsel moved for release of the prisoner on the pleadings (R. 61) (App. 16A) on the ground that the warrant was insufficient upon its face for the reason, *inter alia,* that "it does not recite that the requisition from Michigan was accompanied by an indictment found or affidavit made before a magistrate." (R. 63) (App. 15A-17A)

The trial court held that the warrant was sufficient (R. 65) (App. 17A), discharged the writ, and remanded petitioner to custody. (R. 38) (App. 19A) The trial

court did not make written findings of fact or conclusions of law. (R. 117) (App. 24A)

On appeal to the Supreme Court of Georgia, petitioner enumerated as error the following:

"ENUMERATION OF ERRORS. . . . 4. The Court erred in refusing to hold that the Governor's warrant was insufficient for failure to recite facts necessary to the validity of its issuance . . . which necessary recitals were: (a) A recital that the supporting documents accompanying the Michigan requisition included an indictment, information supported by affidavit, or affidavit made before a magistrate, which recital was essential under 18 U.S.C. 3182 . . . (e) A specific description of the supporting documents accompanying the Michigan requisition, so that the parties concerned could determine precisely what documents the Governor of Georgia had before him." (R. 113-114) (App. 21A-22A)

In affirming the judgment of the trial court the Georgia Supreme Court held, in effect, that the warrant need not recite that it was founded on an indictment or affidavit made before a magistrate; that the supporting papers upon which the charge was based need not be described, attached to, or incorporated in the warrant; and that the petitioner's arrest was legal even though the State failed to allege or show that the charge against him was supported by oath or affirmation. Citing only its own prior decisions (in none of which the precise question here presented had been raised), the Georgia Supreme Court said:

> "Where, in the trial of a habeas corpus case, it appears that the respondent is holding the petitioner in custody under an executive warrant based on an extradition proceeding, and the warrant is regular

> on its face, the burden is cast upon the petitioner to show some valid and sufficient reason why the warrant should not be executed, since there is a presumption that the Governor complied with the Constitution and law, and this presumption continues until the contrary appears. *Blackwell v. Jennings*, 128 Ga. 164 (57 SE 484); *Broyles v. Mount*, 197 Ga. 659 (30 SE 2d 48); *Matthews v. Foster*, 209 Ga. 699 (4) (75 SE 2d 427); *Baldwin v. Grimes*, 216 Ga. 390 (116 SE 2d 207). In the present case, the warrant issued by the Governor of this State was regular on its face and no other evidence was introduced which would overcome the presumption of its validity. The trial court did not err in remanding the prisoner to custody." (R. 118; 224 Ga. 451, 162 SE 2d 426) (App. 25A)

Petitioner timely filed a petition for rehearing, reurging his contentions set forth above (R. 120-125) (App. 27A-30A), relying specifically upon the requirement of *18 U.S.C. 3182, supra,* that extradition warrants must be supported by an indictment or affidavit made before a magistrate; the provision of the *Fourth Amendment* that arrest warrants must be supported by oath or affirmation; and the requirement of the *Fourteenth Amendment* relating to due process. (R. 123) (App. 29A-30A) The petition for rehearing was denied July 2, 1968. (R. 126) (App. 31A)

Without doubt, the Supreme Court of Georgia has failed and refused to afford petitioner the rights and immunities which he specially set up and claimed under the *Fourth* and *Fourteenth Amendments,* and *18 U.S.C. 3182;* and thus has arisen a substantial federal question.

SUMMARY OF REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

(1)

The question presented is one of federal law which has not been, but should be, settled by this Court.

(2)

The decision below is in direct conflict with decisions of Supreme Courts of at least six other states regarding extradition warrants.

(3)

The decision below is in direct conflict with unreversed decisions of federal courts regarding extradition warrants.

(4)

The decision below is probably in conflict with decisions of this Court with respect to Fourth Amendment requirements for arrest warrants generally.

(5)

With respect to the requirement of 18 U.S.C. 3182, that requisition must be accompanied by indictment or affidavit made before a magistrate, the decision below is probably in conflict with *Compton v. Alabama,* 214 U.S. 1.

AMPLIFICATION OF REASONS RELIED UPON

(1)

THE QUESTION PRESENTED IS ONE OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT

The question is federal because it involves constitutional safeguards relating to arrest under the "probable cause" and "oath or affirmation" clause of the Fourth Amendment. It is federal for the added reason that interstate extradition is authorized in the first instance by *Art. IV, Section 2,* United States Constitution and is controlled by *18 U.S.C. 3182* (Act of Congress approved Feb. 12, 1793), implementing the constitutional provision and defining the extradition procedure. The federal nature of the question is further underlined by the fact that the Governor's warrant in the instant case cites as authority for its issuance the Act of Congress passed Feb. 12, 1793, supra. Moreover, the Georgia Legislature has specifically subordinated Georgia's extradition statutes to "the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof." *(Ga. Code Anno. 44-403)*

(2)

THE DECISION BELOW IS IN DIRECT CONFLICT WITH DECISIONS OF SUPREME COURTS OF AT LEAST SIX OTHER STATES REGARDING EXTRADITION WARRANTS

With regard to the sufficiency of recitals in governors' extradition warrants, the decision below is in direct conflict with Supreme Court decisions of at least six other states. This produces a lack of uniformity in the appli-

cation of the Constitution and laws of the United States among the several states, regarding interstate extradition.

The decision below holds in effect that a Governor's warrant need not recite that the requisition was based on an indictment or affidavit made before a magistrate; also, that when the validity of the warrant is attacked on habeas corpus, the State need not make any showing that the charge was supported by oath or affirmation.

The Supreme Court of Florida has considered this precise question and reached an opposite result. In *State ex rel Peck v. Chase, Sheriff* (1926), 91 Fla. 413, 107 So. 541, the Court held that a Governor's warrant which fails to show that it was based on an *indictment* or affidavit made before a *magistrate* does not confer authority on the arresting officer to arrest or detain the accused. The Court also observed, 104 So. at p. 544:

> "A Governor's warrant has no greater dignity than that of a Justice of the Peace."

In *State ex rel Marks v. Chase* (1928) 95 Fla. 37, 116 So. 21, the Florida Supreme Court, sitting *en banc,* cited the above case with approval.

In *State ex rel Sivley v. Hackett et al,* (Tenn. 1930), 33 SW 2d 422, the Tennessee Supreme Court held an extradition warrant insufficient and discharged the prisoner, stating:

> "We would not be disposed to hold the warrant fatally defective or void if in the return to the writ of habeas corpus, or at the hearing, the defendants had shown that as a matter of fact the requisition of the Governor of Georgia was accompanied by an *indictment* found, or an affidavit made before

a *magistrate* properly charging the offense, and that these documents were before the Governor of Tennessee when he issued the warrant here. There was nothing of this kind in the return, however, nor was any such proof introduced on the hearing below.

. . . The judgment of the trial court is accordingly reversed, and the prisoner discharged." (Emphasis ours)

In *Ex parte Hagan* (Mo. 1922), 245 SW 336, the Supreme Court of Missouri, sitting *en banc*, held a rendition warrant fatally defective, stating, 245 SW at p. 339:

"Any kind of instrument might be authentic, and be so certified. In this kind of a case, under the federal statute, only two kinds of authentic instruments have any bearing whatever. To authorize a warrant of rendition the demanding state must present to the surrendering state, either an authentic *indictment,* or an authentic affidavit made before a *magistrate,* charging the alleged fugitive with a crime in the demanding state." (Emphasis ours)

The Missouri Supreme Court then cited numerous cases, both state and federal, holding that a rendition warrant must recite the jurisdictional facts necessary to its validity, particularly that the warrant is founded either on an indictment, or affidavit made before a magistrate, and concluded, 245 SW at p. 341:

"From them all it appears that, where one is committed to jail or to restraint of his person, the warrant committing him must upon its face give evidence of a legal right to hold. Absent such recitals in the warrant, showing a legal right to hold a citizen in restraint of his liberties, such citizen is entitled to discharge upon writ of habeas corpus. In this particular case the rendition warrant is required to recite facts as will show that the Gov-

ernor had the right to issue the warrant. Absent such recitals the warrant is void, and extraneous facts cannot cure the defects."

In *Ex parte Cherry* (Tex. 1950), 234 SW 2d 1011, the Texas Court of Criminal Appeals held that where the Governor's warrant and record in an extradition proceeding did not affirmatively show that the accused was charged in the demanding state by indictment or affidavit, the warrant was insufficient and the accused should be discharged from restraint thereunder. In *Ex parte Bourland* (Tex. 1937), 105 SW 2d 251, the same court held that an extradition warrant must show on its face, without resort to proof, that it was issued on indictment or affidavit; the recital in the warrant that the accused stood charged "by preliminary information and other papers" was insufficient. In *Ex parte Shillings* (Tex. 1933), 63 SW 2d 853, the same court discharged the prisoner, holding that "the executive warrant on its face fails to show that it was founded upon an indictment or an affidavit, and extrinsic evidence is not admissible for the purpose of aiding or amending the warrant or supplying any deficiency therein."

The Supreme Court of North Carolina held, in the case of *In re Veasey* (N.C. 1929), 146 SE 599 at p. 601, that an extradition warrant "when challenged on habeas corpus proceeding, should disclose on its face: . . . that the demand is accompanied by a copy of the indictment or affidavit, charging him with having committed a crime within the demanding state."

In *State ex rel Stundahl v. Richardson* (1885), 34 Minn. 115, 24 NW 354, the court held that an executive warrant of arrest reciting that the alleged fugitive stood charged with a crime in another state by a complaint,

but which did not show that he was so charged by an indictment found or by affidavit made, was insufficient as a justification for the arrest and surrender of the fugitive, unless a copy of the complaint was also produced, showing that it had all the essentials of the affidavit required by the Federal statute.

Thus, in Florida, Tennessee, Missouri, Texas, North Carolina and Minnesota, the extradition warrant must recite, or the State on habeas corpus hearing must otherwise produce factual proof (as contrasted to presumptions based on conclusions) that the requisition from the demanding state was accompanied by an indictment or an affidavit made before a magistrate. In this regard, the decision below of the Georgia Supreme Court makes application of *18 U.S.C. 3182* and the *Fourth Amendment* in Georgia different from their application in these other states,—a situation which this Court ought to rectify and clarify in the interest of uniformity in applying the federal Constitution and laws among the several states.

(3)

THE DECISION BELOW IS IN DIRECT CONFLICT WITH UNREVERSED DECISIONS OF FEDERAL COURTS REGARDING EXTRADITION WARRANTS

Federal and state courts exercise concurrent jurisdiction in habeas corpus actions to test the validity of extradition warrants. The decision below is in direct conflict with unreversed decisions of federal District Courts and federal Courts of Appeals with respect to the sufficiency of recitals in extradition warrants. This produces a lack of uniformity in application of the Con-

stitution and laws of the United States in the field of interstate extradition, a situation which this Court ought to correct.

In the case of *In re Doo Woon* (DC Oregon 1883), 18 Fed. 898, the court ordered the habeas corpus petitioner in an extradition case released, stating:

> "And the (rendition) warrant must bear upon its face the evidence that it was duly issued, and therefore, unless it recites or sets forth the indictment or affidavit upon which it is founded, it is illegal and void. *Ex parte Smith,* (C.C. 1843) 3 McLean 121, Fed. Cas. No. 12698; *Ex parte Thornton,* (1853) 9 Tex. 635."

In the case of *Ex parte Dawson,* 8 Cir. 1897, 83 Fed. 306 (cert. den. 170 U.S. 705), the court, while sustaining an extradition warrant based upon an indictment, recognized with approval the rule that the warrant must show upon its face that it is founded on an indictment or affidavit made before a magistrate. The court said, at pp. 307-308:

> " . . . and, where the requisition, and the copy of the indictment accompanying it are not made a part of the return, and the warrant alone, as in this case, is before the court, it must show . . . (2) that the requisition was accompanied by a copy of an indictment or affidavit charging the commission of an offense . . . "

In *Ex parter Smith* (C.C. Ill. 1843), 3 McLean 121, 22 Fed. Cas. 373, Cas No. 12968, the federal court discharged a habeas corpus petitioner in an extradition case, and in so doing stated, 22 Fed. Cas. at p. 377:

> "In supporting the second point, the Attorney General seemed to urge that there was greater sanctity

> in a warrant issued by the Governor than by an inferior officer. The Court cannot assent to this distinction. This is a government of laws, which prescribes a rule of action, as obligatory upon the Governor as upon the most obscure officer. The character and purposes of habeas corpus are greatly misunderstood by those who suppose that it does not review the acts of an executive functionary."

The foregoing cases, state and federal, follow the general rule stated in *CJS, Extradition,* Sec. 16 (4) p. 439:

> "The warrant must show on its face, without resort to proof, that it was issued on an indictment or affidavit."

(4)

THE DECISION BELOW IS PROBABLY IN CONFLICT WITH DECISIONS OF THIS COURT WITH RESPECT TO FOURTH AMENDMENT REQUIREMENTS FOR ARREST WARRANTS

While this Court does not appear to have passed upon the precise question here involved with respect to arrest warrants in *extradition* cases, this Court certainly has spoken many times regarding arrest warrants *generally*. Under the standards set by this Court, the arrest warrant in the instant case would not pass muster.

In the early case of *Ex parte Burford* (1806), 3 Cranch 448, 2 L. Ed. 495, Chief Justice Marshall held an arrest warrant insufficient, stating:

> "The question is, what authority has the gaoler to detain him? To ascertain this, we must look to the warrant of commitment *only*. It is that only which can justify his detention. That warrant states no offense." (Emphasis ours)

In *Giordenello v. United States* (1958), 357 U.S.

480, 2 L. Ed. 1503, 78 S. Ct. 1245, this Court, citing *Ex parte Burford, supra,* with approval, held an arrest warrant invalid, and rejected the Government's argument that deficiencies in the underlying complaint could be cured by a "presumption" of regularity, stating:

> "The language of the Fourth Amendment, that . . . no warrants shall issue, but upon probable cause, supported by oath or affirmation, . . . of course applies to arrest as well as search warrants. See *Ex parte Burford* (U.S.) 3 Cranch 448, 2 L. Ed. 495 . . . The purpose of the complaint, then, is to enable the appropriate magistrate, here a Commissioner, to determine whether the 'probable cause' required to support a warrant exists. . . . He should not accept without question the complainant's *mere conclusion* that the person whose arrest is sought has committed a crime.
>
> "When the complaint in this case is judged with these considerations in mind, it is clear that it does not pass muster because *it does not provide any basis for the Commissioner's determination* . . . We think these deficiencies could not be cured by the Commissioner's reliance upon a *presumption* that the complaint was made on the personal knowledge of the complaining officer . . . (Emphasis ours) (357 U.S. at p. 486)
>
> "A warrant of arrest can be based upon an indictment because the grand jury's determination that probable cause existed for the indictment also establishes that element for the purpose of issuing a warrant for the apprehension of the person so charged. Here, in the absence of an indictment, the issue of probable cause had to be determined by the Commissioner, and *an adequate basis for such a finding had to appear on the face of the complaint.*" (Emphasis ours) (357 U.S. at p. 487).

In the *Giordenello* case, *supra,* the Government produced in court the underlying complaint upon which the arrest warrant was issued. This Court found the complaint deficient, the warrant consequently invalid. Could the Government have escaped judicial scrutiny of the complaint merely by failing to produce it, then relying upon a "presumption" of its regularity? The decision of the Georgia Supreme Court in the instant case seems to imply that it could, while this Court in *Giordenello* seems to say that deficiencies in an arrest proceeding may not be cured by a "presumption" of regularity.

The fallacy of the holding of the Court below seems to be its assumption that the Governor's warrant was "regular on its face", when, as a matter of fact, it was *not* regular on its face. The meaning of "regular", according to *Ballantines Law Dict.,* 2nd Ed., p. 1107, is "according to established customary forms." Was the Governor's warrant in fact according to established customary forms? Petitioner submits that it was *not* in accordance with the general rule governing extradition warrants, which rule is stated in *CJS, Extradition,* Sec. 16 (4), p. 439, *supra,* as follows:

> "The warrant must show on its face, without resort to proof, that it was issued on an indictment or affidavit."

5.

WITH RESPECT TO THE REQUIREMENT OF 18 U.S.C. 3182, THAT REQUISITION MUST BE ACCOMPANIED BY INDICTMENT OR AFFIDAVIT MADE BEFORE A MAGISTRATE, THE DECISION BELOW IS PROBABLY IN CONFLICT WITH *COMPTON VS. ALABAMA,* 214 U.S. 1

The decision below is probably in conflict with this Court's decision in *Compton v. Alabama,* 214 U.S. 1, where this Court, while not passing upon the precise question here involved, did construe *18 U.S.C. 3182* as requiring the production of an indictment, or affidavit made before a magistrate, as prerequisite for the issuance of a valid extradition warrant. This Court said:

> "But has the executive of the State, upon whom the demand is made for the arrest and extradition of the fugitive, the power to issue his warrant of arrest for a crime committed in another state, unless he is furnished with a copy of the required indictment or affidavit? We are of the opinion that he has not, so far as any authority in respect to fugitives from justice has been conferred upon him by the statute of the United States. The statute, we think, makes it essential to the right to arrest the alleged fugitive under a warrant of the executive of the State where the alleged fugitive is found that such executive be furnished, before issuing his warrant, with a copy of an indictment or an affidavit before a magistrate in the demanding state."

CONCLUSION

For the reason stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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Decatur, Georgia

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APPENDIX

PETITION FOR WRIT OF HABEAS CORPUS (R. 6-16)

(Filed January 18, 1968)

IN THE SUPERIOR COURT OF FULTON COUNTY

JOHN PAUL SHELTON,
Petitioner

VERSUS

T. RALPH GRIMES, SHERIFF,
Respondent

CASE NO. 1308

TO THE HONORABLE SIDNEY T. SCHELL, PRESIDING JUDGE OF SAID COURT

The petition of John Paul Shelton respectfully shows:

1.

That he is now imprisoned and restrained of his liberty by T. Ralph Grimes, Sheriff of Fulton County, Georgia.

2.

That the cause or pretense of such imprisonment and restraint is an extradition warrant issued by Honorable Lester Maddox, Governor of Georgia, on December 28, 1967, a copy of which is hereto annexed.

3.

That said imprisonment and restraint are illegal, and their illegality consists in the following, among other things, to-wit:

4.

That the said warrant is insufficient upon its face, because it does not recite the facts necessary to its validity, as required by Ga. Code Anno. 44-408, in that:

(a) It fails to recite that the requisition referred to therein was accompanied by an indictment found, or affidavit made, before a magistrate; which recitals are essential under provisions of 18 U.S.C. 3182 and Ga. Code Ann. 44-404.

* * *

5.

That the Governor of Georgia did not by reference incorporate in said extradition warrant, or attach thereto, any legally sufficient papers or documents from the demanding state necessary to the validity of its issuance, such as, a legally sufficient requisition from the Governor of Michigan, an indictment found, or an affidavit made before a magistrate.

6.

That there is not attached to said extradition warrant any proper requisition from the Governor of Michigan in the form required by Ga. Code Anno. 44-404, reciting that the person accused therein was present in the demanding state at the time of the commission of the alleged offense, or that he thereafter fled from said state, or that the requisition was based upon a copy of an authenticated indictment found, or affidavit made before a magistrate; neither was there a proper demand made by the Governor of Michigan upon the Governor of Georgia for the rendition of the accused, in any proper requisition attached to the said extradition warrant;

neither was any offense under the laws of Michigan stated or described in any requisition attached to said extradition warrant.

7.

That there is not attached to, or by reference incorporated in, said extradition warrant, any proper requisition supported by any affidavit, complaint or information sworn to before a magistrate by anyone having personal knowledge of the facts of the case, or by anyone who, deposing upon information, belief and hearsay, furnished in said affidavit any proper basis for crediting the hearsay therein, such as, the sources of the information and belief, or that the informants of the affiants were credible or their information reliable, as required by the Fourth and Fourteenth Amendments of the United States Constitution, and by the decisions of the United States Supreme Court in *Giordenello v. United States,* 357 U.S. 480, 2 L ed. 2d 1503, 78 S.Ct. 1245, and in *Aguilar v. Texas,* 378 U.S. 108, 12 L ed. 2d 723, 84 S.Ct. 1509.

8.

That there is not attached to, or by reference incorporated in, the said extradition warrant, any complaint, warrant, indictment, information or affidavit made before a magistrate, substantially or sufficiently charging the commission of any crime, or establishing probable cause for believing the person accused therein guilty of any crime, as required by the Fourth and Fourteenth Amendments of the United States Constitution, to support the issuance of any warrant of arrest.

* * *

9.

That the "supporting" documents referred to in the said extradition warrant not only failed to establish probable cause for believing the person accused therein to be guilty of any offense, but affirmatively showed he was not guilty of the offense attempted to be charged therein.

* * *

11.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue directed to the said T. Ralph Grimes, Sheriff, commanding him to produce petitioner before this Honorable Court, together with the true cause of the detention of petitioner, to the end that inquiry may be had in the premises; and petitioner respectfully requests that he may be permitted on the hearing on said writ to submit such documents as he may be advised in support of his application, and that pending the hearing and determination upon said writ that petitioner be admitted to bail under said writ in such reasonable amount as to the Court may seem proper.

Dated this 18th day of January, 1968.

PIERRE HOWARD

JAMES L. MAYSON

Attorneys for Petitioner

* * *

AUTHORIZATION BY GOVERNOR ROMNEY (R. 13-14; 52)

State of Michigan, Executive Department, George Romney, Governor. To all to whom these presents shall come, Greeting: Know Ye, that I am authorized and empowered, and by these presents do authorize and empower, Ralph W. Smith and/or Arthur F. Krol to take and receive from the proper authorities of the State of Georgia Jay Paul Shelton, a fugitive from justice from the State of Michigan, and convey him to the said State of Michigan, there to be dealt with according to law. The State to be liable for no expense incurred in the pursuit and arrest of said fugitive. In testimony whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed at Lansing, this 23rd day of October, in the year of our Lord one thousand nine hundred and sixty-seven.

(Signed) GEORGE ROMNEY, Governor

EXTRADITION WARRANT SIGNED BY GOVERNOR MADDOX (R. 11-12; 62; 90; 91)

Executive Department, the State of Georgia. The Governor of the State of Georgia. To all the Sheriffs and Constables thereof — Greeting: Whereas His Excellency, George Romney, Governor of the State of Michigan, and as the Executive authority thereof, has demanded of me Jay Paul Shelton, a Fugitive from Justice from the said State, and has produced to me a Requistion, accompanied by supporting documents, charging the said Fugitive with having committed in the said State the crime of Conspiracy to utter and publish, conspiracy to commit false pretenses and uttering and publishing, which documents are duly certified as authentic by His Excellency, the Governor of said State, and has also appointed Ralph W. Smith and/or Arthur F. Krol and/or Agent on the part of the said State, to receive the said Fugitive from Justice from Civil Authorities of this State to the end that he may be carried to said State, there to be dealt with according to law. And, whereas, it is suspected that the said Fugitive from Justice is now within the jurisdictional limits of this State:

Now, in accordance with the provisions of an Act of Congress, passed 12th February 1793, respecting Fugitives from Justice, and in accordance with the provisions of the Uniform Criminal Extradition Act approved February 21, 1951 (Ga. L. 1951, p. 726), and in order that the said Fugitive from Justice may be brought to trial for the offense for which he stands charged:

You are hereby commanded, to arrest and deliver the said Fugitive from Justice to the said Agent, for the purpose of being carried to the said State within whose

jurisdiction said offense is alleged to have been committed. And I moreover charge and require all officers, both Civil and Military, in this State, to be vigilant in endeavoring to apprehend the said Fugitive from Justice. Given under my hand and the seal of the Executive Department, at the Capital, in the City of Atlanta, the 28th day of December, A.D. 1967, and of the Independence of the United States of America, the One Hundred and Ninety-Second.

(Signed) LESTER MADDOX.

AFFIDAVIT OF JOHN PAUL SHELTON (R. 15-16)

STATE OF GEORGIA,
FULTON COUNTY –

John Paul Shelton, being first duly sworn according to law, deposes and says that he is the petitioner in the foregoing petition for a writ of habeas corpus signed by petitioner's attorneys, Pierre Howard and James L. Mayson; that he has read and understands said petition and all the allegations therein; that all the facts and allegations contained in said petition are true; that this petitioner and affiant, John Paul Shelton, is not the Jay Paul Shelton named in the extradition warrant attached to said petition for writ of habeas corpus; that petitioner is 50 years of age and resides at 1856 Delowe Place, S.W., Atlanta, Fulton County, Georgia, with his wife Alice Mae Shelton;

* * *

And further this affiant sayeth not.

/s/ JOHN PAUL SHELTON

JOHN PAUL SHELTON, Affiant

Subscribed and sworn to before me this 18th day of January, 1968.

/s/ JAMES L. MAYSON

JAMES L. MAYSON
Notary Public
State of Georgia

* * *

WRIT OF HABEAS CORPUS (R. 17)
CASE NO. 1308

TO: HONORABLE T. RALPH GRIMES, SHERIFF
FULTON COUNTY COURTHOUSE,
ATLANTA, GEORGIA

YOU ARE HEREBY COMMANDED to have the body of JOHN PAUL SHELTON, by you imprisoned and detained as aforesaid, together with the time and cause of such imprisonment and detention, before me, in the Superior Court of Fulton County, Room ..... of the Fulton County Courthouse, at 10:30 A.M. on the 27th day of Feb., 1968, to do and receive what shall then and there be considered concerning the said JOHN PAUL SHELTON; and have you then and there this Writ.

WITNESS, the Honorable Sidney T. Schell, Presiding Judge of said Court, this 18th day of January, 1968.

/s/ SIDNEY T. SCHELL

SIDNEY T. SCHELL
Judge, Fulton Superior Court, A.J.C.

* * *

RETURN AND ANSWER OF
T. RALPH GRIMES, SHERIFF (R. 36-37)
CASE NO. 1308

Now comes T. Ralph Grimes, Sheriff of Fulton County, Georgia, and makes his return to the petition and return in said case and shows:

1.

Respondent is the Sheriff of Fulton County, Georgia.

2.

Respondent shows that petitioner is not presently imprisoned, but has been admitted to bail pending determination of the legality of petitioner's detention in this proceeding.

3.

Respondent further says that petitioner's detention, in so far as this proceeding is concerned, is by virtue of a certain extradition warrant issued by the Governor of Georgia on December 28, 1967, which said warrant and supporting documents are in due and legal form and require that petitioner be extradited to the State of Michigan.

4.

Except as herein admitted, each and every allegation in the petition is denied.

Wherefore, respondent prays the order of the Court remanding petitioner to respondent's custody for return

to the State of Michigan in accordance with the laws in such cases provided.

Dated this 27th day of February 1968.

/s/ LEWIS R. SLATON

LEWIS R. SLATON

/s/ CARTER GOODE

CARTER GOODE

Attorneys for T. Ralph Grimes, Sheriff

AFFIDAVIT

Personally comes T. Ralph Grimes, who being first duly sworn says that the facts stated within and foregoing response in said case are true.

/s/ T. RALPH GRIMES

T. RALPH GRIMES

Subscribed and sworn to me this 27th day of February 1968.

/s/ LAURA POOLE

LAURA POOLE
Notary Public
State of Georgia

(Imprint of N.P. Seal)

Commission expires 8-17-71

(Filed in office this the 27th day of Feb. 1968.

GLENDA G. BURRELL
Deputy Clerk

EXCERPTS FROM TRANSCRIPT OF HABEAS CORPUS HEARING (R. 50-90) (Case No. 1308)

Extradition Proceedings before the Hon. Charles A. Wofford, Judge, Fulton Superior Court, Fulton County Courthouse, Atlanta, Georgia, tried February 27, 1968.

(R. 52)

MR. GOODE: Judge, we have got an Extradition Proceeding here. These Habeas Corpus have some of the characteristics of demurrers and motions actually in that they raise points on defects and, at least, what conceive to be defects in the Extradition Proceedings.

I think perhaps it is in order that we – somebody has got to do it, introduce the entire Extradition Proceedings as Respondent's Exhibit Number 1, consisting of first the Governor's warrant for the arrest of Jay Paul Shelton, dated December 28, 1967, and signed by Governor Maddox, together with an authorization by Governor Romney of Michigan designating Ralph W. Smith and Arthur F. Krol to receive Shelton from the authorities of the State of Georgia to return him to Michigan, if and when his extradition is ordered. Along with that, a file of documents certified by the Secretary of State of the State of Michigan on October the 23rd, 1967, consisting of a copy of an application for requisition signed by the prosecuting attorney of Detroit on October 9th, 1967.

* * *

(R. 53)

MR. HOWARD: All right. We object to the admitting of any of the records, supporting records, in this matter other than the Governor's warrant of the

State of Georgia unless that document is specifically referred to in the Governor's warrant and unless it is shown that the Governor himself considered that paper in reaching his decision in issuing the Governor's warrant.

* * *

MR. GOODE: Then there are certain certificates attached, one by Elizabeth J. Ross and others, dated October the 9th, 1967, certifying that one Leadbetter, the City Clerk of Detroit, the certificate relating to the term of office to Mr. Cahallan, the District Attorney of Wayne County, attached to the application for interstate extradition.

A certificate by the City Clerk of Detroit dated October the 9th, 1967. A certificate to the official character of the clerk by Joseph A. Sullivan, Circuit Judge, dated October the 9th, 1967. Certificate by the Clerk of Wayne County Circuit Court dated October the 9th that Judge Sullivan is, in fact, the Circuit Judge. Then, a certificate relating to an annexed complaint, warrant and information signed by the Clerk of the Recorder's Court, E. Burke Montgomery, with the official character of that clerk certified by the Judge. Then, under that certificate, certain complaints against Forrest Etheridge Honea, whom we had not long ago that went back to Florida, and Jay Paul Shelton, alleging certain offenses, giving citations to laws of the State of Michigan, they being — let's see if they got it all attached, let's see now if I got any numbers I can identify them by. I'm not too (R. 55) familiar with Michigan procedure but this appears to be what would here be an affidavit to be the foundation of an accusation with the accompanying accusation. Now, it looks like it corresponds pretty much to that, charging —

MR. HOWARD: You haven't read them?

MR. GOODE: I have read them reasonably closely. They have the usual trouble in getting them together to make out a fair — let's see, one of them is entitled the criminal warrant in recorder's court numbered 140516. Then, following that is an accusation signed by the prosecuting attorney naming Jay Paul Shelton, as Defendant, charging him with three counts of — actually it looks like forgery, setting out the offenses, and then down at the bottom it cites the appropriate sections, I take it, of the Michigan laws, that bearing number, also, 140516. On the back being referred to as information for conspiracy to utter and publish, conspiracy to commit false pretenses, uttering and publishing, naming Jay Paul Shelton as Defendant.

That appearing to be also attached are certain affidavits by Joseph Wersching, sworn to —

MR. HOWARD: This is all hearsay.

MR. GOODE: Sworn to the 22nd day of September, 1967, and also an affidavit by one Ralph W. Smith, sworn to on (R. 56) the 22nd day of September, 1967.

An affidavit by William L. Cahalan, who is the prosecuting attorney of Wayne County, setting forth the public laws of the State of Michigan alleged to have been violated in connection with these charges, and two certified checks numbered 188392 and 188394 on the National Bank of Detroit, Michigan, both dated May 31st, 1967.

A letter from the F.B.I. dated September the 22nd, 1967 addressed to Mr. Cahalan stating that a latent fingerprint developed on National Bank of Detroit cash-

ier's check number 188394, that's one of the numbers I just gave, is identical with the right ring finger impression of Jay Paul Shelton, F.B.I. number 1811715, together with a photograph also attached and referred to in one of the affidavits, I don't think it's referred to in both of them, which shows a picture of Mr. Shelton in the background and a picture of Forrest Honea in the foreground. As a matter of fact, as I said, it happened, having recently had some dealings with Mr. Honea, I recognize him in the picture and the likeness of Mr. Shelton is unmistakable.

* * *

(R. 57)

* * *

MR. GOODE: We also have, may it please The Court, certified over the seal of the Executive Department of the State of Georgia copy of the request by the Governor of Michigan for the extradition of Mr. Shelton, which is a part of the extradition papers.

* * *

MR. HOWARD: All right. At this time I want to go into the admissibility of it. If The Court pleases, I object to the admission of any of the record just read by Mr. Goode, which he did not read the contents of into (R. 58) the record. Many of them are affidavits, like a bank officer who says a teller whom he doesn't know the name told him that a man did so and so, and that somebody else told him that the man who did it was so and so as identified by a picture, and it is entirely an affidavit based on what other people told him. These are contained in several of these affidavits.

Now, I want to cite particularly to Your Honor the fact that the Governor's warrant does not refer to these

papers and the Governor's warrant itself we wish to attack as being insufficient.

* * *

(R. 61)

If The Court pleases, we take the position in this matter and move the release of the prisoner on the pleadings in this case for this reason, and I refer to my brief which Your Honor has, and is rather lengthy but goes into the main points in the case. Now, primarily it should be recognized that a Governor's warrant has no greater effect than a warrant of an inferior magistrate. All arrest warrants must be tested by the same constitutional and statutory standards.

* * *

(R. 62)

MR. GOODE: Your Honor, I tell you what I'll do, I think I'm going to withdraw everything we have offered except the Governor's warrant from the Governor of the State of Georgia, save a lot of this, and then see where we come out. We will just offer — withdraw each and every document that we have offered before The Court except the Governor's warrant. That will save us all time.

* * *

MR. HOWARD: Well, at this point, Your Honor, I want to object at this time now to the use of the Governor's warrant and ask for a dismissal of the prisoner and discharge of the prisoner on the following grounds.

Number one, it does not state the time, date or place or county of the alleged offense. It does not state against whom the alleged offense was committed. It does not

name or describe any crime whatsoever. It (R. 63) does not state all basic, pertinent particulars of the alleged crime. It does not allege that the prisoner – that the petitioner was imprisoned in the State of Michigan at the time of the commission of the alleged crime or that he thereafter fled from the state, and it does not recite that the requisition from the Governor of Michigan was accompanied by an indictment found or affidavit made before a magistrate. * * * (R. 65) That warrant doesn't set out a crime.

MR. GOODE: Well, there are some other things about that.

THE COURT: Well, there are two factors that go into making up an interstate extradition warrant, first, that the person demanded is substantially charged by an affidavit or affidavit properly certified by the Governor of the state making the demand; and, second, that the person demanded is a fugitive from the justice of the state, the executive authority which makes the demand. Now, this warrant states clearly those two grounds.

* * *

(R. 66)

THE COURT: Another fact that would go in was the fact whether a crime was committed now. I think the background of interstate extradition is what was the statutes of the states at the time they entered into this agreement with each other through ratification of the Constitution, and when the several states of the American Confederacy ratified and adopted the Constitution of the United States, they did not surrender the unquestionable right which then belonged to them to declare within their respective territorial limits what should be

considered therein criminal offenses against their laws for the protection of persons and property. I do not believe that this hearing, under that theory, we would have the right to go into what constituted a crime in the State of Michigan. We would have to accept the Governor's warrant as being sufficient, and I overrule that part of your objection.

* * *

(R. 90)

MR. GOODE: That would be all that we have got, Your Honor, I stand on the Governor's warrant.

MR. HOWARD: Now, Your Honor, we want to file a notice of appeal, which I have prepared.

(End of hearing)

ORDER DISCHARGING WRIT AND REMANDING PETITIONER TO CUSTODY (R. 38)

The petition and Writ coming on to be heard, said Jay Paul Shelton is remanded to the custody of the respondent for return to the State of Michigan pursuant to Uniform Criminal Extradition Act.

This February 27, 1967.

Signed:

CHARLES A. WOFFORD
J.S.C.A.J.C.

* * *

NOTICE OF APPEAL (R. 2)

Case No. 1308 (Formal parts omitted)

Notice is hereby given that John Paul Shelton, petitioner in the above-styled case, hereby appeals to the Supreme Court of Georgia from the judgment of this Court in the above-styled action dated Feb. 27, 1968, dismissing writ of habeas corpus.

The Clerk will please omit nothing from the record on appeal, but will include therein all petitions, pleadings and briefs filed by either party, along with all affidavits, exhibits, orders, and stenograph transcript of all oral proceedings, arguments, colloquies and testimony.

/s/ PIERRE HOWARD
PIERRE HOWARD

Filed for record
2-27-68
Recorded
2-28-68

/s/ JAMES L. MAYSON
JAMES L. MAYSON
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify this 27 day of Feb., 1968 that I have served a copy of the foregoing notice of appeal on counsel for respondent by handing a copy thereof to Carter Goode, Assistant Solicitor General, A.J.C.

/s/ PIERRE HOWARD
PIERRE HOWARD
Attorney for Petitioner

* * *

ENUMERATION OF ERRORS (R. 113-115)

IN THE SUPREME COURT OF GEORGIA

JOHN PAUL SHELTON,
Appellant

VERSUS

T. RALPH GRIMES, SHERIFF OF FULTON COUNTY,
Respondent

CASE NO. 24,716

1.

The Court erred in remanding appellant to custody.

2.

The Court erred in not making written findings of fact and conclusions of law, as required by Code 50-127 (9).

3.

The Court erred in refusing to hold that the Governor's warrant was insufficient for failure to name or describe any offense constituting a crime (the naming of a crime being essential under 18 U.S.C. 3182 and Ga. Code 44-404, in that the offense designated in the warrant as a "conspiracy to utter and publish, conspiracy to commit false pretenses and uttering and publishing" was no crime, absent an allegation that the paper published was forged, and that there was an intent to defraud.

4.

The Court erred in refusing to hold that the Governor's warrant was insufficient for failure to recite facts necessary to the validity of its issuance, as required by Ga. Code 44-408, which necessary recitals were:

(a) A recital that the supporting documents accompanying the Michigan requisition included an indictment, information supported by affidavit, or affidavit made before a magistrate, which recital was essential under 18 U.S.C. 3182, *supra*, and Ga. Code 44-408, *supra*.

(b) A recital that the accused was present in Michigan when the alleged offense was committed and thereafter fled from Michigan, which recital was essential under Ga. Code 44-404.

(c) A recital of the time, date, place of occurrence of the alleged offense, against whom committed, the specific charge and all basic particulars thereto, which recital was essential under Ga. Code 27-103, 27-103.1, and 27-105.

(d) A recital that John Paul Shelton, the person in custody, was identical with the Jay Paul Shelton named in the Governor's warrant, which recital was essential under Ga. Code 44-302.

(e) A specific description of the supporting documents accompanying the Michigan requisition, so that the parties concerned could determine precisely what documents the Governor of Georgia had before him.

5.

The Court erred in refusing to discharge appellant from custody when the preponderance of evidence adduced on the hearing proved that the appellant John Paul Shelton was not identical with the Jay Paul Shelton named in the warrant.

6.

The Court erred in refusing to discharge appellant from custody when the respondent failed to produce any evidence that appellant had been present in Michigan, or had fled from Michigan.

Respectfully submitted,

/s/ JAMES L. MAYSON

JAMES L. MAYSON
Attorney for Appellant
325 Atlanta National Building
50 Whitehall Street, S.W.
Atlanta, Georgia
688-7152

* * *

OPINION AND JUDGMENT OF GEORGIA SUPREME COURT (R. 117-119)

Decided June 20, 1968

SUPREME COURT OF GEORGIA

24716 SHELTON v. GRIMES, SHERIFF

NICHOLS, Justice. A habeas corpus petition was filed in the name of John Paul Shelton in which it was alleged among other things that the petitioner was being illegally detained under an extradition warrant naming Jay Paul Shelton and that the warrant failed to allege that the petitioner "is identical with the person named in said warrant." The trial court remanded the petitioner to the custody of the sheriff and it is from this judgment that he appeals. *Held:*

1. The first enumeration of error, which contends that the case should be remanded to the trial court for written findings of fact and conclusions of law as required by Code Ann. § 50-127 (9) (Ga. L. 1967, pp. 835, 838) is without merit inasmuch as that section deals only with habeas corpus cases wherein the prisoner is being restrained by virtue of a sentence of a State court of record.

2. "No person shall be discharged upon the hearing of a writ of habeas corpus in the following cases, to-wit: . . . by reason of any misnomer in the warrant or commitment, where the court is satisfied that the party detained is the party charged with the offense." Code Section 50-116 (4); *Williams v. Sipple,* 178 Ga. 61 (172 SE 62); *Gilbert v. Williams,* 217 Ga. 168 (121 SE2d 648). The stipulation of counsel for the prisoner that John Paul Shelton was also known

as Jay Paul Shelton together with the testimony of the prisoner that on prior arrests records and court records he had been listed as Jay Paul Shelton was sufficient evidence to authorize the trial court to find that the prisoner was the person named in the warrant.

3. "Where, in the trial of a habeas corpus case, it appears that the respondent is holding the petitioner in custody under an executive warrant based on an extradition proceeding, and the warrant is regular on its face, the burden is cast upon the petitioner to show some valid and sufficient reason why the warrant should not be executed, since there is a presumption that the Governor complied with the Constitution and law, and this presumption continues until the contrary appears. *Blackwell v. Jennings,* 128 Ga. 264 (57 SE 484); *Broyles v. Mount,* 197 Ga. 659 (30 SE2d 48); *Matthews v. Foster,* 209 Ga. 699 (4) (75 SE2d 427)." *Baldwin v. Grimes,* 216 Ga. 390 (116 SE2d 207). In the present case the warrant issued by the Governor of this State was regular on its face and no other evidence was introduced which would overcome the presumption of its validity. The trial court did not err in remanding the prisoner to custody.

Judgment affirmed. All the Justices concur.

JUDGMENT OF GEORGIA SUPREME COURT, AFFIRMING JUDGMENT OF FULTON SUPERIOR COURT (R. 119)

Atlanta, June 20, 1968

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered: *John Paul Shelton v. T. Ralph Grimes, Sheriff.* This case came before this court upon an appeal from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

PETITION FOR REHEARING (R. 120-124)

JOHN PAUL SHELTON,
Appellant
VERSUS
T. RALPH GRIMES, SHERIFF,
Appellee

NO. 24,716
SUPREME COURT OF GEORGIA

The appellant respectfully moves the Court to grant a rehearing in the above-styled case, upon the following grounds and for the following reasons:

1.

In sustaining the Governor's warrant, this Court necessarily held that it was not mandatory for the warrant to recite and show upon its face that the requisition was based on an indictment or affidavit. In so holding, this Court has overlooked and failed to follow the great weight of authority, both state and federal, making up the general rule stated in CJS, Extradition, Sec. 16 (4), p. 439, viz.,

> "The warrant must show on its face, without resort to proof, that it was issued on an indictment or affidavit."

The Court has overlooked and failed to apply the following state and federal decisions which follow the above-stated rule:

State v. Chase (Fla. 1926) 107 So. 541, Headnote 5

Ex parte Hagan (Mo. 1922) 245 SW 336,339, Headnote 3

In re Veasey (N.C. 1929) 136 SE 599, 601, Headnote 3

State ex rel Sively v. Hackett (Tenn. 1930), 33 SW 2d 422, Headnote 1

Ex parte Bourland (Tex. 1937) 105 SW 2d 251, Headnote 2

Ex parte Dawson, 8 Cir. 1897, 83 Fed. 306,307

Re Doo Woon (D.C.Ore. 1883) 18 Fed. 898, Headnote 2

Ex parte Hart, 4 Cir. 1894, 63 Fed. 249, Headnotes 4 & 5

2.

In sustaining the extradition warrant; this Court necessarily held that Georgia Code 27.103.1 requiring arrest warrants to recite the date and place of offense, against whom committed, and all other basic pertinent particulars, is not applicable to extradition warrants, but applies only to warrants for offenses against the penal local laws of Georgia. In so holding, the Court has overlooked the effect of the due process and equal protection clauses of the Fourteenth Amendment, which are violated when less protection is afforded to persons arrested for prosecution *out* of the state than is afforded to persons arrested for prosecution *in* Georgia, there being no reasonable or logical basis for such a distinction.

3.

In sustaining the extradition warrant this Court has overlooked and failed to apply the federal rule stated by Chief Justice Marshall in *Ex parte Burford,* 3 Cranch 448, 2 L. ed. 495, that the facts necessary to the validity of an arrest warrant must appeal within the four corners of the warrant itself; viz.,

> "The question is, what authority has the jailor to detain him? To ascertain this, we must look to the

warrant of commitment only. It is that only which can justify his detention."

4.

In sustaining the extradition warrant the Court has overlooked and failed to apply the requirement of Ga. Code 44-408, that extradition warrants must recite the *facts* necessary to the validity of their issuance.

5.

The Court misapplied *Baldwin v. Grimes,* 216 Ga. 390, to the instant case, as the main question in the instant case is the sufficiency of recitals in the Governor's warrant, which was neither raised nor decided in the Baldwin case. The Baldwin case purports to sustain an extradition warrant that is "regular on its face", but furnishes no definition or guideline as to the meaning of "regular". Insofar as the Baldwin case purports to sustain an extradition warrant that does not recite facts necessary to the validity of its issuance, it is in conflict with the following applicable authority which this Court has either overlooked, misconstrued, or failed to apply:

Ga. Code 44-408, requiring the Governor's warrant to recite the facts necessary to the validity of its issuance;

18 U.S.C. 3182, requiring that a requisition be accompanied by an indictment or affidavit, and further requiring, by implication, that such fact be recited in the Governor's warrant;

Ga. Code 27.103.1, requiring that arrest warrants allege and show on their face the time and place of the offense, against whom committed, and all basic pertinent particulars;

Fourth Amendment, United States Constitution, relating to arrest and probable cause;

Fourteenth Amendment, United States Constitution, relating to due process of law and equal protection of the law.

6.

It is respectfully requested that the Court revise and amplify its opinion by including therein a specific ruling as to (1) the construction of Ga. Code 44-408, supra, requiring extradition warrants to recite the facts necessary to the validity of their issuance; (2) whether Ga. Code 27.103.1 relating to recitals in arrest warrants generally is applicable to extradition warrants, either by its own terms or by application of the due process and equal protection clauses of the Fourteenth Amendment; and (3) whether or not a Governor's warrant has greater efficacy, dignity and sanctity than the warrant of an inferior magistrate.

WHEREFORE, the premises considered, appellant respectfully petitions the Court to grant a rehearing, and to reverse the judgment below.

PIERRE HOWARD

JAMES L. MAYSON
Attorneys for Appellant

CERTIFICATE OF COUNSEL

The undersigned counsel for appellant hereby certifies that upon careful examination of the opinion of the Court in the above-styled case, he believes that the Court has overlooked, misconstrued, failed to apply, and misapplied, the facts, statutes, decisions and constitutional provisions as set forth in the foregoing petition for rehearing; and that this petition for hearing is filed in good faith and not for delay.

JAMES L. MAYSON
Counsel for Appellant

CERTIFICATE OF SERVICE

I certify that this first day of July, 1968, that I have mailed a copy of the foregoing petition to Hon. Carter Goode, Counsel for Appellee, Fulton County Courthouse, Atlanta, Georgia 30303, postage prepaid.

JAMES L. MAYSON

* * *

ORDER DENYING PETITION FOR REHEARING (R. 126)

SUPREME COURT OF GEORGIA

Atlanta, July 2, 1968

The Honorable Supreme Court met pursuant to adjournment. The following order was passed: John Paul Shelton v. T. Ralph Grimes, Sheriff. Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

ORDER STAYING REMITTITUR (R. 129)

JOHN PAUL SHELTON, *Appellant* VERSUS T. RALPH GRIMES, SHERIFF, *Appellee*	CASE NO. 24,716 SUPREME COURT OF GEORGIA

Upon consideration of motion of appellant's counsel in the above-styled case to stay remittitur, it is hereby

ORDERED, that the remittitur in this case be, and it is hereby, stayed, for a period of ninety days from date of denial of petition for rehearing (petition for rehearing denied July 2, 1968); and it is further

ORDERED, that upon appellant's filing of petition for writ of certiorari in the United States Supreme Court within said ninety day period, to review this Court's judgment in said case, the said stay shall remain in effect pending final determination of the case by the United States Supreme Court; and it is further

ORDERED, that counsel for appellant be, and he is hereby, directed to notify this Court when the petition for writ of certiorari is filed in the United States Supreme Court; or, should Counsel decide to abandon seeking further review, counsel is hereby directed to notify this Court of same promptly, so that the stay

hereby granted may be terminated and the remittitur send down as provided by law.

This 3 day of July, 1968.

/s/ W. H. DUCKWORTH

Chief Justice,
Supreme Court of Georgia

CERTIFICATE OF SERVICE

I certify this ..... day of September, 1968 that I have mailed a copy of the foregoing petition and appendix to counsel for respondent, Hon. Carter Goode, Assistant Solicitor General, Fulton County Courthouse, Atlanta, Georgia 30303, postage prepaid.

JAMES L. MAYSON
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 587

JOHN PAUL SHELTON,
Petitioner,

v.

LEROY N. STYNCHCOMBE,
Sheriff of Fulton County,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LEWIS R. SLATON,
District Attorney
Atlanta Judicial Circuit

CARTER GOODE,
Assistant District Attorney
Atlanta Judicial Circuit

Fulton County Courthouse
Atlanta, Georgia 30303

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IN THE

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NO. 587

JOHN PAUL SHELTON,
Petitioner,

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LEROY N. STYNCHCOMBE,
Sheriff of Fulton County,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent prays that the petition for writ of certiorari be denied, for the reasons herein given.

CITATION TO OPINION BELOW

The citations in the petition are correct.

JURISDICTION

The jurisdiction of the court is conceded.

QUESTIONS PRESENTED

I. Whether a Governor's Rendition Warrant in interstate extradition proceedings must under the Fourth Amendment to the United States Constitution as made applicable by the Fourteenth Amendment, or the provi-

sions of 18 U.S.C. § 3182, recite a requisition based on indictment or affidavit.

II. Whether the Georgia procedure in habeas corpus to test the legality of arrest under a Governor's Rendition Warrant in interstate extradition proceedings, as respects burden of proof and burden of evidence, contravenes the Fourteenth Amendment to the United States Constitution by denying due process of law to the petitioner.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the references in the petition, we will from time to time refer to provisions contained in Chapter 44-4, Georgia Code Annotated, which is the Uniform Criminal Extradition Act enacted by the Georgia Legislature in 1951.

STATEMENT OF THE CASE

The statement in the petition, including Appendix 12A is factually correct. We do not agree with the interpretation of the record contained in the first paragraph on page 7 of the petition nor with the conclusion that the Supreme Court of Georgia has denied petitioner any federal rights or immunities, constitutional or statutory.

REASONS FOR NOT GRANTING THE WRIT

I.

Petitioner fails to show conflict between the judgment and decision below and any federal constitutional or statutory provision.

Here we challenge petitioner's major premise.

Article 4, Section 2 of the United States Constitution, and the implementing legislation, 18 U.S.C. § 3182, say

nothing about recitals in a Governor's arrest or rendition warrant. The statute uses the words "shall cause him to be arrested" but that is all.

The Fourth Amendment requires that no warrants shall issue, but upon probable cause, supported by oath or affirmation, and that the "person or things to be seized be particularly described"; otherwise it is silent as to the recitals of a warrant.

The Georgia Code Annotated provides the form of demand for extradition in Section 44-404, and in Section 44-408 provides that the rendition warrant must "substantially recite" the facts necessary to the validity of its issuance.

The *Giordenello* case (357 U.S. 480) cited and relied upon by petitioner, is authority that the Fourth Amendment applies to arrest warrants as well as to search warrants, but it is not in point otherwise, as the question was whether the written and sworn complaint for the issuance of the warrant before the Court set forth sufficient facts to authorize a determination of probable cause. The *Aguilar* case (378 U.S. 108) involved the sufficiency of an affidavit as probable cause for the issuance of a search warrant.

Compton v. Alabama, 214 U.S. 1 turned on the documents which must be submitted to the Governor of the asylum state, before such governor is authorized to issue his warrant (probable cause).

On the other hand this Court has held that the issuance of a rendition warrant is prima facie evidence that the accused is a fugitive from justice and was substantially charged with the commission of a crime (*Illi-*

nois ex rel McNichols v. Pease, 207 U.S. 100; *In re Moyer,* 12 Idaho 250, 85 P. 897, affirmed 203 U.S. 221) regardless of whether these facts are recited in the instrument (*Munsey v. Clough,* 196 U.S. 364).

The conflict between the decision of the Supreme Court of Georgia and the highest courts of the other states referred to by petitioner is more apparent than real, e.g., the Tennessee case cited by petitioner, *State ex rel Sivley v. Hackett,* 161 Tenn. 602, 33 S.W. 2d 422, contains in the quotation at pp. 12, 13 of the petition a statement that documents accompanying the warrant can be looked to in amplification of the recitals in the warrant. A Florida District Court of Appeal in *Kelly v. State ex rel Rosenthal,* 149 So. 2d 85, indicated that annexed documents might cure deficiencies in a Governor's rendition warrant. Of this more later.

It appears that at least five other states are in harmony with Georgia in the matter of recitals. They are: Connecticut (*Ross v. Crofutt,* 84 Conn. 370, 80 A. 90); Louisiana (*State ex rel. Burnett v. Flournoy,* 136 La. 852, 67 So. 929); Massachusetts (*Com. v. Hall,* 9 Gray 262, 69 Am.Dec. 285); Mississippi (*Ex Parte Devine,* 74 Miss. 715, 22 So. 3); South Carolina (*Ex Parte Murray,* 112 S.C. 342, 99 S.E. 798). The rationale is that there is no constitutional or statutory provision requiring particular recitals.

We do not accept the proposition advanced by petitioner that the writ will be granted in cases of conflict between state courts of last resort, but have set out the foregoing to show that Georgia is not alone. We note petitioner cites no authority for this proposition. None has come to our attention.

The warrant states the charges and the nature of the proceedings, and is sufficient as notice to the person named. It is not a pleading.

II.

Georgia procedure, as respects burden of proof and burden of producing evidence on habeas corpus hearings in extradition cases, does not deny due process to the petitioner.

Here we question petitioner's minor premise.

In the decision below, the Court held that the Governor's warrant, absent any other evidence, on a habeas corpus hearing, made the detention prima facie legal.

However, under the decisions of the Supreme Court of Georgia, the entire extradition proceedings must accompany the warrant. In *McFarlin v. Shirley,* 209 Ga. 794, 76 S.E. 2d 251, the Court held that when respondent at the habeas corpus hearing introduced a rendition warrant of the Governor of Georgia and a document denominated a requisition, but failed to introduce any copy of an indictment or affidavit properly certified charging crime in the demanding State, the prima facie showing made by the warrant was defeated and the petitioner entitled to discharge. In *West v. Graham,* 211 Ga. 662, 87 S.E. 2d 849, the respondent sheriff introduced a Governor's rendition warrant and testified to the effect that while he had other relevant documents in his possession, he had neither a formal demand for the rendition of the prisoner nor a copy of an indictment or an affidavit made before a magistrate, it was held error to remand the prisoner. In *Brown v. Grimes,* 214 Ga. 388, 104 S.E. 2d 907, the respondent introduced the warrant, the petitioner the supporting documents, and the Supreme

Court of Georgia held that the judgment remanding petitioner was error since the supporting documents failed to show that a crime was committed in the demanding State, and because the supporting documents contained no formal demand or requisition upon the Governor of Georgia by the Governor of the demanding State.

Section 44-411, Georgia Code Annotated, from the Uniform Act, provides that a person arrested upon a Governor's rendition warrant shall "be taken forthwith" before a judge of a court of record, who "shall inform him of the demand made for his surrender and of the crime with which he is charged." The judge is also required to advise of the right of the arrested person by habeas corpus to test the legality of the arrest and to grant the arrested person a reasonable time to apply for the writ. This provision, in the light of the cases cited above, has had the effect of causing the entire extradition proceedings to accompany the Governor's rendition warrant. The judge could, under these cases, refuse to commit the arrested person to custody on a warrant standing alone; he could also direct the preparation of an application for the writ and set its hearing instanter, and discharge for want of a requisition or a charge of crime by way of indictment or affidavit.

We have no doubt that should the Governor not forward or refuse to forward any supporting documents with the warrant, so that the person arrested could examine them, not only for information but minutely for legal sufficiency, our courts would follow the suggestion of the South Carolina Court in *Ex Parte Murray*, already cited, (99 S.E. 798 at p. 800), and hold the warrant insufficient. No other conclusion can be reached

from the three decisions of the Supreme Court of Georgia, cited above.

Reference to the record (Exhibit 12A, petition, R. 52 et seq.) shows that counsel for respondent offered what he referred to as "the entire extradition proceedings . . . consisting of first the Governor's warrant" on the hearing of the habeas corpus in this case. He later referred to as being among the proceedings an information (good in Georgia to support a requisition, *Deering v. Mount*, 204 Ga. 872, 52 S.E. 2d 596) (petition 13A, R. 55) and "the request by the Governor of Michigan for the extradition of Mr. Shelton" (petition 15A, R. 57).

Petitioner could have introduced these other documents and taken advantage of any deficiencies. In this connection it is to be noted that petitioner did not allege that the Governor of Georgia did not have before him all necessary documents when he issued his warrant, but only attacked the warrant on its face; in other words, his complaints do not go behind the warrant. As a matter of fact, the record will disclose that the principal issue on the habeas corpus hearing was identity.

It is said in 31 Am.Jur.2d., Extradition, § 61, at page 967, that "a failure to set out a particular recital (in a rendition warrant) may be cured by including with the return of the sheriff, or producing on a hearing of habeas corpus proceedings, the papers on which the warrant was issued, which show on their face that they are in due and proper form." As authority, the following are cited: *United States ex rel. Hackler v. Sain,* (CA 7 Ill.) 287 F.2d 286, cert. den. 368 U.S. 836; *People ex rel. Hackler v. Lohman,* 17 Ill. 2d 78, 160 N.E. 2d 792, cert. den. 361

U.S. 963; *State ex rel. Sivley v. Hackett,* 161 Tenn. 602, 33 S.W. 2d 422.

State of South Carolina v. Bailey, 289 U.S. 412, appears to be authority for the Georgia procedure as respects burden of proof or of going forward with evidence. In that case it is pointed out that a hearing on a habeas corpus proceeding for release from custody under an extradition warrant is not a criminal trial, and it was held that petitioner should have testified.

The Court has recently held in *Smith v. California,* 361 U.S. 147, that the States generally may regulate allocation of burden of proof in their courts. In *Speiser v. Randall,* 357 U.S. 513, at 523, it is said "It is of course within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion "unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts,* 291 U.S. 97, 105.

Certainly the Georgia procedure shown in the cases cited places no onerous burden on one arrested on a Governor's rendition warrant, in habeas corpus proceedings to test the legality of the proceedings. Indeed, the respondent must have on hand for production at the hearing all documents required by law to make the action of the Governor legal, else the petitioner is entitled to discharge. Clearly we have no denial of procedural due process, hence no Fourteenth Amendment question.

The decision of the Supreme Court of Georgia rests

on the presumption that the Governor complied with the Constitution and law in issuing his rendition warrant. Since interstate extradition has for its very foundation the presumption that Governors of asylum states will perform their duty to extradite fugitives (cf. *Drew v. Thaw,* 235 U.S. 432, holding that there is no power, state or federal, to compel a governor to do so) it should not be surprising that a court has thought fit to indulge a presumption in favor of the acts of a Governor who is performing this duty.

CONCLUSION

For the foregoing reasons, Respondent urges this Court to decline to issue the writ of certiorari in this case.

Respectfully submitted,

LEWIS R. SLATON,
District Attorney
Atlanta Judicial Circuit

CARTER GOODE,
Assistant District Attorney
Atlanta Judicial Circuit

Counsel for Respondent
LEROY N. STYNCHCOMBE,
Sheriff of Fulton County

Fulton County Courthouse
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

GEORGIA, FULTON COUNTY

I, Carter Goode, of counsel for Leroy N. Stynchcombe, Sheriff of Fulton County, respondent in the foregoing case, certify that I have this day served copies of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari upon Petitioner, by depositing in the United States Post Office in Atlanta, Georgia, two copies of same in an envelope addressed to James L. Mayson, Attorney, 325 Atlanta National Building, Atlanta, Georgia, counsel of record for petitioner, with sufficient first class postage affixed thereto.

This January ....., 1969.

CARTER GOODE
Assistant District Attorney
Atlanta Judicial Circuit

[redacted]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NUMBER 287

JOHN PAUL SHELTON,

Petitioner

VERSUS

T. RALPH GRIMES,
SHERIFF OF FULTON COUNTY,

Respondent

PETITIONER'S REPLY BRIEF

[redacted]

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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

NUMBER 587

JOHN PAUL SHELTON,

Petitioner

VERSUS

T. RALPH GRIMES,
SHERIFF OF FULTON COUNTY,

Respondent

PETITIONER'S REPLY BRIEF

Respondent argues that the conflict between the Georgia Supreme Court and the highest courts of other states "is more apparent than real" (Br. 4). Respondent is totally incorrect. Even a cursory reading of the conflicting decisions cited in the petition for writ of certiorari reveals a real and obvious conflict between the state supreme courts on this important federal question.

Respondent takes issue with the proposition that this Court will grant certiorari "in cases of conflict between state courts of last resort" (Br. 4). Respondent overlooks the crucial fact that the conflict cited in the instant

case relates to a *federal* question, inasmuch as interstate extradition is controlled by 18 U.S.C. 3182 (Act of Congress Approved Feb. 12, 1793), and the allocation of the burden of proof in extradition hearings involves procedural due process as controlled by the Fourteenth Amendment. Furthermore, Georgia's Uniform Extradition Act provides that the Governor's authority to deliver up fugitives is subject to "the provisions of the Constitution of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof" (Ga. Code. Anno. 44–403). The Georgia Constitution also provides that the Constitution and laws of the United States take precedence over state laws (Ga. Const., Ga. Code Anno. 2–8001). So it cannot seriously be argued that Georgia has preempted, or even attempted to preempt, the field of interstate extradition.

Respondent observes that petitioner "cites no authority" for the proposition that this Court should resolve conflicts between state courts of last resort, and that "None has come to our attention" (Br. 4). Ample precedent exists for granting the writ to resolve such conflicts. In *T. V. Williams v. Stockham Valves & Fittings* (1959) 358 U.S. 450, 3 L ed 2d 421, 79 S. Ct. 357, 67 ALR 2d 1292, the State Revenue Commissioner of Georgia asked this Court to grant certiorari to review a decision of the Georgia Supreme Court. One of the principal reasons relied upon in the petition for certiorari was: "3. The decision of the Supreme Court of Georgia is in conflict with decisions of the supreme courts of at least six other states on these questions and produces a lack of uniformity in the application of the Constitution of the United States amongst the several states."

The petition for certiorari was granted, and is cited verbatim in *Ga. Pleading, Practice and Legal Forms, Vol. 1, page 13 et seq,* as a model petition. The question involved in that case concerned the constitutionality of state tax laws, and was a federal question being decided by state courts—as is the question presented in the instant case. That case arose in Fulton County, Georgia, as does the instant case. This Court granted certiorari and reversed the Georgia Supreme Court. Mr. Justice Clark wrote this Court's opinion, and what he said with respect to reasons for granting the writ would be equally applicable to the instant case, with some minor paraphrasing. Observing that there was a "need for clearing up the tangled underbrush of past cases" with respect to the question presented, and that commerce between the states had "grown up like Topsy", Justice Clark said:

> "The resulting judicial application of constitutional principles to specific state statutes leaves much room for controversy and confusion and little in the way of precise guides to the States . . . This Court alone has handed down some three hundred full-dress opinions . . . the decisions have been 'not always clear . . . consistent or reconcilable. A few have been specifically overruled, while others no longer fully represent the present state of the law.' " (358 U.S. at p. 457, 458).

Respondent has not commented on reason number three relied on by petitioner for granting the writ, viz., that the decision below "is in direct conflict with unreversed decisions of *federal* courts regarding extradition warrants." Neither does respondent comment upon, or deny, the *federal* nature of the question presented.

Respondent does not, and cannot, reconcile or rationalize the very real and obvious conflict between the decisions, both state and federal, cited in the petition for certiorari. Respondent rather attempts to argue the merits of the decision below by citing five state cases which respondent construes as being "in harmony with Georgia in the matter of recitals" (Br. 4). If these five cases mean what respondent says they do, then they merely serve to point up the fact that there is, indeed, a conflict on a federal question and a "need for clearing up the tangled underbrush of past cases" (*Williams case, supra*, 358 U.S. at p. 457).

If the mere number of decisions on each side of the question means anything, petitioner would like to cite another state court decision that is in direct conflict with the decision below. This is the case of *Baugh v. State* (1962) 154 So. 2d 674, at p. 676, where the Supreme Court of Alabama held an extradition warrant insufficient for "failing to recite that the requisition was accompanied by an authenticated copy of an indictment or information supported by affidavit or an affidavit made before a magistrate."

Respondent cites three extradition decisions of this Court as authority for the proposition that the issuance of an extradition warrant "is prima facie evidence that the accused is a fugitive from justice and was substantially charged with the commission of a crime" (Br. 3–4). Each decision is readily distinguishable. Each decision helps rather than hurts petitioner. The first decision is *Illinois ex rel McNichols v. Pease*, 207 U.S. 100, where this Court observed that the extradition warrant recited—and that "its recitals are important" (207 U.S. at p. 105)—that the governor of the demand-

ing state had produced to the governor of the asylum state a copy of a "complaint and affidavit made by and before a properly empowered officer in and of the said state, in accordance with the laws thereof, charging John McNichols, the person so demanded, with having committed against the laws of the said state of Wisconsin the crime of larceny from the person, which appears by the said copy of a complaint and affidavit certified as authentic by the governor of said state, now on file in the office of the secretary of state of Illinois . . ." (207 U.S. at pp. 105–106). This Court further observed that the record showed that McNichols was in custody under an extradition warrant "which appears upon its face to be warranted by the Constitution and laws of the United States" (207 U.S. at p. 109); and that "whether the supreme court of Illinois erred in its final judgment must be determined by the record before us" (207 U.S. at p. 110). The accused in that case did not raise the question of sufficiency of recitals in the governor's warrant, but raised the defense of alibi, which this Court found wanting. In ordering the accused extradited this Court said:

> "When a person is held in custody as a fugitive from justice under an extradition warrant, *in proper form, and showing upon its face all that is required by law to be shown as a prerequisite to its being issued,* he should not be discharged from custody unless it is made clearly and satisfactorily to appear that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States" (207 U.S. at p. 112). (Emphasis by brief writer).

Thus the McNichols case says only that a Governor's warrant is prima facie sufficient to hold the accused only

when it is IN PROPER FORM and shows UPON ITS FACE the facts necessary to its validity.

The second extradition decision cited by respondent is *In re Moyer*, 203 U.S. 221 (Br. 4), where the accused sought release on habeas corpus *after* he had been taken to the demanding state of Idaho. The Idaho Supreme Court denied relief, and this Court affirmed on authority of *Pettibone v. Nichols*, 203 U.S. 192, pointing out that the proceeding in the latter case rested upon a criminal complaint "verified by the oath" of the prosecuting attorney. (203 U.S. at p. 193).

The third extradition decision of this Court cited by respondent is *Munsey v. Clough*, 196 U.S. 364 (Br. 4). In this case the accused did not question the sufficiency of recitals in the governor's warrant *per se*, but "alleged the insufficiency of the papers to authorize the granting of the same" (196 U.S. at p. 371). The supporting documents accompanying the requisition in that case were introduced in evidence—which was not done in the instant case—and the record showed that the supporting papers before the governor of the asylum state included a "copy of an indictment" (196 U.S. at p. 369). There was no recital in the governor's warrant that the person demanded was a fugitive from justice; however this defect was cured by the introduction of the supporting papers, which showed that there was before the governor of the asylum state an "affidavit of one Whitney", stating that at the time of the commission of the crime set forth in the indictment the defendant was in the demanding state and that the defendant "fled from said Commonwealth of Massachusetts on or about the fourth day of November A.D. 1901" (196 U.S. at p. 370). This Court in denying relief

to the habeas corpus petitioner observed that the affidavit of Whitney was "to the effect that at the time of the commission of the crime she (defendant) was in the State of Massachusetts" (196 U.S. at p. 374).

Respondent cites the extradition case of *South Carolina v. Bailey*, 289 U.S. 412, as authority for the Georgia procedure "as respects the burden of proof or of going forward with evidence" (Br. 8). In Bailey the sufficiency of the governor's warrant was not in question, the petitioner there relying wholly upon proof of alibi, which was not conclusive.

Respondent cites another extradition case, *Drew v. Thaw*, 235 U.S. 432, in connection with the argument that the governor presumably complied with the law in issuing the warrant. This case is not in point, inasmuch as this Court observed, in ordering Thaw's extradition, that the demand was in due form and was based on an "indictment" (235 U.S. at p. 440).

Finally respondent cites two non-extradition decisions by this Court as authority for the proposition that the states may regulate the burden of proof in their courts (Br. 8). The first case is *Smith v. California*, 361 U.S. 147, where this Court held a municipal obscenity ordinance unconstitutional and observed (obiter) that the states generally may regulate allocation of the burden of proof in their courts, but then went on to say that where this device had been used unconstitutionally "we struck down its application" (361 U.S. 147, at p. 151).

The second case cited by respondent regarding burden of proof is *Speiser v. Randall*, 357 U.S. 513, 2 L ed 2d 1460, 78 S. Ct. 1332. We are grateful to respondent for

citing this case, where this Court struck down a California statute that unfairly shifted the burden of proof to claimants in tax exemption cases. This Court said:

> "Of course, the burden of going forward with the evidence at some stages of a criminal trial may be placed on the defendant, but only after the State has 'proved enough to make it just for the defendant to be required to repel what has been proved with excuse or explanation, or at least that upon a balancing of convenience or of the opportunities for knowledge the shifting of the burden will be found to be an aid to the accuser without subjecting the accused to hardship or oppression'. *Morrison v. California*, 291 U.S. 82, 88, 89, 78 L ed 664, 669, 54 S Ct. 281. In civil cases too this Court has struck down state statutes unfairly shifting the burden of proof." (357 U.S. at p. 524).

This Court further held in *Speiser* that "The power to create presumptions is not a means of escape from constitutional restrictions", citing *Bailey v. Alabama*, 219 U.S. 219, 239. (357 U.S. at p. 526). This Court then held that "Since the entire statutory procedure, by placing the burden of proof on the claimants, violated the requirements of due process, appellants were not obliged to take the first step in such a procedure" (357 U.S. at p. 529).

The question in the instant case finally boils down to whether the burden was on the petitioning prisoner or the respondent sheriff to produce the "supporting papers" referred to, but not otherwise described, in the Governor's warrant. The Hon. Carter Goode, Assistant District Attorney, who represented respon-

dent at the habeas corpus hearing, and who still represents respondent in this Court, has not explained to this Court his reason for not introducing the "supporting papers" in evidence. Mr. Goode claimed to have in his possession "the entire Extradition Proceeding" (R. 52, App. 12A). But when petitioner's counsel said he would object to admission of any document "unless it is shown that the Governor himself considered that paper in reaching his decision" (R. 53, App. 12A, 13A), Mr. Goode hastily said, "Your Honor, I tell you what I'll do, I think I'm going to withdraw everything we have offered except the Governor's warrant from the Governor of the State of Georgia, save a lot of this, and then see where we come out" (R. 62, App. 16A). "Your Honor, I stand on the Governor's warrant" (R. 90, App. 18A).

If the Governor's warrant had recited the facts necessary to the validity of its issuance, particularly that it was based on an indictment or affidavit, respondent might well stand on it. Since it did not recite those facts, the burden was on respondent's counsel, who claimed he had the "entire extradition proceeding" in his possession, to produce the "supporting papers" referred to in the warrant, and to show by competent evidence that they were before Governor Maddox, and that they included an indictment or affidavit. It is rather frivolous and quibbling to suggest that the burden was not on respondent, whose counsel claimed to have the supporting papers, but was on petitioner, who did not have them, and had no way of knowing what they consisted of, or whether they were indeed the supporting documents that were considered by Governor Maddox and referred to in the warrant.

Respondent cites Georgia's Uniform Extradition Act (Br. 3, 6) with which Act petitioner has no quarrel. This Act provides that the Governor's warrant "must substantially recite the facts necessary to the validity of its issuance" (Ga. Code Anno. 44–408, Acts 1951, pp. 726, 728). Petitioner stands on the proposition that the respondent *cannot* stand, any longer, upon a Governor's warrant which fails to recite the facts "necessary to the validity of its issuance".

CONCLUSION

For the reason stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify this .... day of February, 1969 that I have mailed a copy of the foregoing reply brief to counsel for respondent, Hon. Carter Goode, Assistant Solicitor General, Fulton County Courthouse, Atlanta, Georgia 30303, postage prepaid.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

CHARLES KAY,

Petitioner

VERSUS

LEROY N. STYNCECOMBE,
SHERIFF OF FULTON COUNTY,

Respondent

PETITION FOR REHEARING

JAMES L. MAYSON
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Atlanta, Georgia 30303

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

NUMBER 587

JOHN PAUL SHELTON,

Petitioner

VERSUS

LEROY N. STYNCHCOMBE,
SHERIFF OF FULTON COUNTY,

Respondent

PETITION FOR REHEARING

Petitioner respectfully requests the Court to grant a rehearing in the above-styled case, upon the following grounds which petitioner believes are substantial and were not previously presented to the Court.

1.

RELIANCE BY COURT BELOW UPON PRESUMPTION OF VALIDITY OF GOVERNOR'S WARRANT WAS UNJUSTIFIED AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF LAW

The Court below relied wholly upon the Governor's warrant and the "presumption of its validity," holding

that "there is a presumption that the Governor complied with the Constitution and the law, and this presumption continues until the contrary appears" (R. 117-119; App. 25A).

This holding, under the factual situation of this case which will be summarized in a moment, is in conflict with the following decisions of this Court:

Ross v. United States, 92 U.S. 281, 283-284, holding that "No inference of fact or of law is reliable drawn from premises which are uncertain."

Manning v. Insurance Co., 100 U.S. 693, 698, holding that "The only presumptions of fact which the law recognizes are immediate inferences from facts proved."

Tot v. United States, 319 U.S. 463, where this Court struck down a statutory presumption, holding, pages 467-468. "Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience."

Pennsylvania Railroad Co. v. Chamberlain, 288 U.S. 333, 340-341, holding that a rebuttable inference of fact "must necessarily yield to credible evidence of the actual occurrence," and that where a party's case is based upon an inference, "the case must fail upon proof of undisputed facts inconsistent with such inferences." The foregoing language is particularly applicable to the instant case, where the presumption of validity of the Governor's warrant was rebutted and was clearly inconsistent with "credible evidence of the actual occurrence." The factual situation militating against and

overcoming the presumption of validity in the instant case was as follows:

> *First,* the petitioner swore under oath and without contradiction that the supporting documents referred to in the extradition warrant "not only failed to establish probable cause for believing the person accused therein to be guilty of an offense, but affirmatively showed he was not guilty of the offense attempted to be charged therein" (R. 6-16; App. 4A).
>
> *Second,* there was introduced in evidence without objection or contradiction the "authorization" of the Governor of Michigan containing no reference whatsoever to being based upon an indictment or affidavit (R. 13-14; 52; App. 5A).
>
> *Third,* any possible presumption of validity of the Governor's warrant is negated by the Governor's failure to comply with *Georgia Code 44-408,* which specifically requires him to recite in the warrant the facts necessary to the validity of its issuance; and of course one of the jurisdictional facts is that the requisition was based on an indictment or affidavit.
>
> *Fourth,* the respondent deliberately elected not to produce the "entire extradition proceeding" documents which he claimed to have in his possession. He thus failed to rebut the petitioner's sworn allegation mentioned above, and failed to overcome the obvious deficiencies in the requisition or authorization of the Governor of Michigan. He also failed satisfactorily to account for the failure of Governor Maddox to abide by *Georgia Code 44-408, supra,* commanding recital of jurisdictional facts necessary to the warrant's validity.

Petitioner concedes that if the Governor's warrant had recited those jurisdictional facts—i.e., that it was based upon an indictment or affidavit—a strong pre-

sumption of validity would arise. But where the Governor or any other public official does not even claim to have met the applicable constitutional and statutory requirements, there can be no presumption that his act was valid.

2.

PETITIONER WAS DEPRIVED OF EQUAL PROTECTION OF LAW BY THE LOWER COURT'S DECISION WHICH HOLDS IN EFFECT THAT STATE REQUIREMENTS FOR ARREST WARRANTS GENERALLY DO NOT APPLY TO ARREST WARRANTS ISSUED BY THE GOVERNOR

Georgia Code 27-103, 27-103.1 and *27-105* (*Acts 1962, p. 668*) require all arrest warrants to recite the time, date, place of occurrence of alleged offense, against whom committed, the specific charge and all basic particulars thereto. None of these recitals are contained in the Governor's warrant under which petitioner has been arrested. This point was raised in the trial court (R. 2), and was urged in the Court below (R. 113-115, 120-124; App. 22A, 28A), as violating petitioner's right under the Fourteenth Amendment to equal protection of the laws. There is no reasonable or logical basis for any distinction in standards for arrest warrants generally, and arrest warrants issued by the Governor. A prisoner who is arrested and held illegally can derive small comfort from the fact that the arrest warrant was signed by the Governor, rather than an ordinary magistrate.

CONCLUSION

For the reasons stated, the petition for rehearing should be granted and the writ of certiorari should issue.

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COUNSEL'S CERTIFICATE OF GOOD FAITH AND CERTIFICATE OF SERVICE

The undersigned counsel for petitioner hereby certifies that the foregoing petition for rehearing is filed in conformity with Rule 58 of the Rules of this Court; that it is not filed for delay; that it is filed in good faith; that the grounds of said petition are restricted to grounds which he believes are substantial and which were not previously presented to the Court. The undersigned counsel further certifies that a copy of the foregoing petition has this date been mailed, postage prepaid, to counsel for respondent, Hon. Carter Goode, Assistant District Attorney, Fulton County Courthouse, Atlanta, Georgia 30303.

This 20th day of March, 1969.

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